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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 632

NEW ORLEANS SHIPWRECKING CORPORATION, PETITIONER

v.

WILLIAM W. SMITH, GRENVILLE MELLON, RICHARD PARKHURST, RAYMOND McKEOUGH, AND JOSEPH K. CARSON, JR., ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The oral opinion of Judge Holtzoff on the motions for preliminary injunction and summary judgment (R. 9–11), the pre-trial hearing memorandum of Judge Schweinhaut (R. 12–13), and the opinion, findings of fact and conclusions of law of Judge Bailey of the District Court for the District of Columbia (R. 13–17) are not reported. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 80–81) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 13, 1948 (R. 82). The petition for a writ of certiorari was filed on March 7, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a contract to sell government scrap was formed between petitioner and the United States Maritime Commission by the mere entry in the Commission's minutes of its vote to accept some bids of petitioner, although no authorized officer or employee of the Commission knowingly gave notice of acceptance to petitioner before the Commission rescinded its vote on the following day.

2. Whether, assuming the existence of a government contract to sell scrap to petitioner, specific performance will be granted petitioner although (a) the United States is an indispensable party which has not been joined, and (b) title has not passed to petitioner who has an adequate remedy at law.

STATUTE AND REGULATIONS INVOLVED

Section 3 (b) (c) of the Administrative Procedure Act, 60 Stat. 238, 5 U. S. C. 1002 (b) (c), and pertinent regulations of the United States Maritime Commission issued thereunder, are set forth in Appendix A, *infra*, pp. 20–23.

STATEMENT

On January 30, 1948, petitioner instituted this suit in the District Court for the District of Columbia to enjoin respondents, members of the United States Maritime Commission, from selling certain surplus vessels of the United States. The United States was not joined as a party defendant. Petitioner alleged that a contract of sale for said vessels had been entered into on January 22, 1948, between petitioner and respondents and prayed that the court decree that title be vested in petitioner (R. 2–6). The pertinent facts are as follows:

On September 17, 1947, the Maritime Commission issued Invitation for Bids No. PD–X–397 which listed sixty surplus LST's (Landing Ship Tank) for sale as scrap (R. 52–67). On October 14, 1947, additional surplus LST's were offered for sale as scrap in Invitation for Bids No. PD–X–404 (R. 14). Both invitations provided that bids were to be submitted on a Form of Bid which was attached thereto (R. 67). Also attached was a Form of Acceptance to be executed in the name of the Commission by the Secretary thereof (R. 69). Bids were invited upon the following terms and conditions: Bids could be withdrawn at any time prior to the time fixed for opening (R. 56); the Commission reserved the right to reject any and all bids, call for new bids, waive any irregularity in any bid and make such award or awards as it might deem most advantageous (R.

56); title was to be conveyed by a bill of sale (R. 57); the Buyer assumed all the risks of ownership from the "time of receipt of notice of acceptance of bid" (R. 57); payment of the full purchase price was due on or before delivery to the buyer, but in any event not later than forty days "from date of receipt of notice of acceptance of bid" (R. 57); "each of the vessels will be delivered to the Buyer together with a bill of sale" and delivery had to be accepted within forty days "from the date of receipt of notice of acceptance of bid" (R. 57–58).

On October 24, 1947, and on November 14, 1947, the bids were opened and petitioner's bids were found to be high on nineteen of these vessels (R. 14). On January 22, 1948, the Commission met to consider the recommendations made concerning the sale of these vessels by the Chief of the Large Vessel Sales Division, and unanimously voted to award to petitioner fifteen of the said vessels (R. 15). The Commission thereupon authorized the "proper officers of the Commission" to take any and all actions necessary and proper to carry the action of the Commission into effect (R. 15, 75). Customarily, telegrams were sent out notifying successful bidders of awards to them (R. 15), such telegrams being prepared for the signature of the Secretary of the Commission (R. 33). "No other employee or officer of the Commission other than the Commission itself, had authority to communicate notice of official

commission action." (Finding 12, R. 16.) On this occasion, however, upon the suggestion of a member of the Commission that no formal notice be sent because of his intention to move for reconsideration the next day, the Secretary sent out no notice. He testified that, accordingly, he asked the Chief of the Bureau of Purchases and Sales not to have any notice prepared and not to discuss the matter with anyone (R. 34, 35). On January 23, 1948, the Commission met in session and voted to reconsider and rescind its action of January 22 with respect to, among others, the awards to petitioner (Finding 11, R. 16, 76–78).

On January 22, 1948, one Nathan Siegel, who was employed by petitioner and other firms to keep them informed on the availability of scrap and to report on the status of their bids (R. 15, 25), went to the offices of the Commission to see the Secretary about a matter not connected with petitioner's interests. He learned from an acquaintance, not an employee of the Commission, whom he encountered in a corridor, that the Commission had awarded the LST's in question (R. 15–16). Thereupon, Mr. Siegel went to the office of a Mr. Carter, who was Chief of the Contract Branch of the Large Vessel Sales Division, and subsequently to the office of a Mr. Taylor, an Administrative Assistant to Mr. Carter, whose duties included the preparation of telegrams for the signature of the Secretary, notifying bidders of awards (R. 16). He then

went to the office of the Secretary of the Commission and inquired of him whether it was true that the Commission had finally made the award (R. 16). The Secretary, according to Mr. Siegel's testimony, said, "Yes, * * * I am glad that the matter has been finally disposed of." (R. 27.) The Secretary testified that he did not recall any statement of this nature (R. 35, 38). There was no evidence that the Secretary informed Mr. Seigel as to which vessels, if any, had been awarded petitioner. The trial court found that "The Secretary of the Commission did not deny that the Commission had taken such action" (Finding 9, R. 16). On the following day, January 23, 1948, Mr. Siegel again went to the office of Mr. Taylor and was there informed by a stenographer that she was preparing a telegram to petitioner, notifying it of the awards (Finding 7, R. 16, 48–49). However, said telegram was never sent by the Commission to petitioner (Finding 8, R. 16). "The fact that Mr. Siegel was employed by the plaintiff Corporation was not known to Messrs. Carter, Taylor or Williams [Secretary of the Commission] at the time or times that Mr. Siegel inquired of them as to the action of the Commission" (Finding 10, R. 16). "* * * no person authorized to do so knowingly communicated to the plaintiff notice of the action of the Commission taken January 22, 1948" (Finding 12, R. 16–17).

Upon the filing of the complaint on January 30, 1948, a temporary restraining order was granted, effective until February 6, 1948, and later extended to February 13, 1948. On February 13, 1948, after oral argument, the trial court denied petitioner's motion for a preliminary injunction and respondents' motion for summary judgment, and advanced the case for trial (R. 9–11). On April 13, 1948, the trial court dismissed the complaint and entered judgment in favor of respondents, holding that petitioner's bid was never accepted by the Commission (R. 17). "No contract arose until some member of the Commission or officer or employee of the Commission, with authority to do so, communicated an acceptance of the plaintiff's offer to the plaintiff" (R. 13–14). Notice of appeal was filed on May 12, 1948, but petitioner did not seek an injunction pending appeal. Absent such injunction, said vessels were sold and delivered to other parties and titles thereto transferred.[1] On December 13, 1948, the Court of Appeals for the District of Columbia Circuit affirmed the judgment of the District Court (R. 82).

ARGUMENT

Basically, petitioner contends that, in view of Section 3 of the Administrative Procedure Act, 60 Stat. 238, 5 U. S. C. 1002, and the decision

[1] See Appendix B, *infra*, pp. 24–25.

of this Court in *United States* v. *Purcell Envelope Co.*, 249 U. S. 313, entry in the minutes of the Maritime Commission of its action taken on January 22, 1948, constitutes notice of acceptance of petitioner's bids. In the alternative, petitioner urges that the courts below erred in finding that only the Secretary of the Commission was authorized to give notification of awards. Petitioner's contentions are plainly in error. The final step necessary to the formation of a contract between petitioner and the United States was the transmission by the Secretary of the Commission to petitioner of a written notification of acceptance. No such notification was forwarded and no contract was formed. We submit, accordingly, that the petition is without merit as a matter of substantive law. Moreover, there are other conclusive obstacles in petitioner's path. Even if respondents did contract to sell to petitioner, the United States is the real party in interest and an indispensable party which has not consented to be sued. Moreover, petitioner has an adequate remedy at law. Finally, we suggest that the present case may be moot. The vessels involved have been sold and delivered to other parties and title thereto transferred. There was, of course, no stay or other injunctive order which forbade such sale.

1. The law applicable to this case was stated in the oral opinion of Judge Holtzoff on peti-

tioner's motion for a preliminary injunction (R. 9–11); it was adopted by Judge Schweinhaut in a pre-trial memorandum (R. 12–13), by Judge Bailey in dismissing the complaint (R. 14–17), and by the Court of Appeals in its affirmance (R. 80–81). "In order that a binding contract may have come into being it was necessary that a notice of acceptance, either oral or in writing, or telegraphic or telephonic should have been communicated, or should have been attempted to have been communicated to the plaintiff,[2] and this communication must have been sent by a person authorized to do so by the Commission" (R. 10).

This result necessarily follows from the general rules of contract law. The mere resolution of a principal to accept an offer, uncommunicated to the offeror by the principal or his authorized agents, does not consummate a contract. Whether such resolution to accept is recorded in the memorandum book of an individual or in the minutes of an association is of no legal significance until there is an actual authorized communication to the offeror. Cf. *Powell* v. *Lee,* 99 L. T. 284, 24 T. L. R. 606 (K. B.); *Smith* v. *Independent School District No. 12,* 108 Minn. 322; *Sears* v. *Kings County Elevated R. Co.,* 152 Mass. 151; *Bankers Trust Co.* v. *Economy Coal Co.,* 224 Iowa 36;

[2] "Petitioner completely accepts" the foregoing statement of the law (Pet. 18).

Kushler v. *Weber,* 182 Mich. 224; 2 Fletcher, *Cyc. of Corporations,* sec. 431. Moreover, acceptance is not accomplished by notice to third parties, not known agents of the offeror, or to agents of the offeree with instructions to inform the offeror. Cf. *Barr* v. *Lapsley,* 1 Wheat. 151; *Harvey* v. *Duffey,* 99 Cal. 401; *New* v. *Germania Fire Ins. Co.,* 171 Ind. 33; *Horton* v. *New York Life Ins. Co.,* 151 Mo. 604; *Felthouse* v. *Bindley,* 11 C. B. (NS) 869, 142 E. R. 1037; 1 Williston, *Contracts* (Rev. ed. 1936), pp. 41, 190, 243.

Petitioner urges, however, that, because of Section 3 of the Administrative Procedure Act, 60 Stat. 238, 5 U. S. C. 1002 (*infra,* p. 20), and pertinent regulations of the Commission issued thereunder, the minute entry of the Commission, after its first vote, was a matter of public record and thus was notice of acceptance to petitioner, even though it did not actually know of the award. But, as indicated by the general rules stated above, the law of offer-and-acceptance normally requires not only some overt act by the offeree but also actual communication of the acceptance to the offeror,[3] or, at least, an attempt to communicate by the means specified or authorized

[3] Compare the rationale of the "reward" cases that a claimant is deemed not to have accepted a reward-offer by his performance, unless he actually knew of the published offer to reward. See, *e. g.*, *Williams* v. *West Chicago Street R. R. Co.*, 191 Ill. 610; *Fitch* v. *Snedaker*, 38 N. Y. 248; 1 Williston, *Contracts* (Rev. Ed. 1936), Sec. 33.

in the offer.[4] Accordingly, mere general publication of the acceptance is not adequate notice to the offeror unless such publication was authorized by him. Here, the offer expressly indicates that an individual notice of acceptance, actually communicated to petitioner, was contemplated rather than a general publication to all the world. The Invitation for Bids, which sets forth the terms and conditions upon which petitioner's bids were invited, makes it clear that neither the Commission nor the bidder were to be contractually bound until actual notice of acceptance had been received. The invitation provides that the risks of ownership shall be on the buyer from the time of *receipt* of notice of acceptance, that payment of the purchase price is due on or before delivery to the buyer, but in any event not later than forty days from *receipt* of notice of acceptance, and that delivery of the vessels and the transfer of title are to be accepted within forty days from *receipt* of notice of acceptance (R. 57, 58). It is obvious that, were the situation reversed and the Commission seeking to enforce the alleged contract, petitioner would not contend that publication itself, without actual notice to petitioner, was sufficient.

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[4] If the offeree manifests his acceptance by a method authorized by the offeror, a contract is formed regardless of whether the offeror actually receives the communication. Cf. 1 Williston, *Contracts* (Rev. ed. 1936), Sec. 83 (acceptance by mail).

In any event, assuming that official publication of an acceptance is sufficient notice to the offeror, neither the Administrative Procedure Act nor the Commission's regulations provide that minute entries of the Commission shall be made available to the public at large. Section 3 (b) of the Act provides that "every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases." 5 U. S. C. 1002 (b). Section 3 (c) requires that "matters of official record shall in accordance with published rule be made available to *persons properly and directly concerned*" (emphasis supplied). 5 U. S. C. 1002 (c). The pertinent Commission regulation (46 CFR, 1946 Supp., § 204.1) states that "(a) Pursuant to section 3 (a) and (c), respectively, of the Administrative Procedure Act (60 Stat. 237) there shall be available: (1) for public inspection, all final opinions or orders in the adjudication of cases * * * (2) To *persons properly and directly concerned* therewith, matters of official record * * * (b) Application for inspection of materials covered by paragraph (a) of this section shall be made to the Secretary of the Commission, Washington, D. C., who shall have authority to decide all questions presented by the application" (emphasis supplied) *infra,* pp. 21–22. The Administrative Code of the Commission, Part 63, Files and Records, Sec. 63.7 thereof, made available for examination

at the office of the Secretary by 46 CFR, 1946 Supp., § 200.1 (e), provides in part that "records maintained by the Minutes Section shall be accessible to officers and employees of the Commission on proper identification and for a justifiable reason, and shall not be accessible to persons outside the Commission without the prior approval of the Secretary." *Infra,* p. 22.

We submit that the award of a contract to sell surplus naval vessels does not constitute a "final opinion or order in the adjudication of cases", required to be published or made available to public inspection by the Administrative Procedure Act. The plain import of these words relates to agency action which might be considered as precedents in administrative law.[5] As seen from the statute and the regulations, other matters of official record are not available to the public at large indiscriminately but only to persons properly and directly concerned therewith; permission must be obtained from the Secretary of the Commission before inspection of the minute entries may be had. Even assuming that these minute entries are opinions and orders, "public

[5] "This section [3 (b)] requires that rulings and orders either be published or otherwise made available to public inspection. Since rulings and orders made in the course of adjudication of particular cases are one of the principal sources of administrative law, it is obviously necessary that they be published or made available to public inspection." Sen. Doc. 248, 79th Cong., 2d sess., p. 17. See, also, pp. 198, 199, 225, 256, 357.

inspection" is limited to those securing approval of the Secretary. There is no evidence that petitioner, or its agent, Mr. Siegel, obtained such permission or inspected the minutes prior to rescission of the award on January 23, 1948. That petitioner might have been able to do so before that time does not signify that petitioner was thereby constructively notified.

2. Petitioner also asserts that *United States* v. *Purcell Envelope Co.*, 249 U. S. 313, is authority for the proposition that a contract is formed by entry in the contracting agency's minutes of a resolution to accept a bid, and that the decision below is in conflict therewith. Such a proposition finds no support in the holding of the *Purcell* case. Although there is language that the *Purcell* contract was consummated by entry of the order awarding the contract,[6] such language must be read with regard to the question and the record before the Court, and must also be related back to the rule set forth in *Garfielde* v. *United States*, 93 U. S. 242, which the court in the *Purcell* case viewed as controlling. In the *Purcell* case, a copy of the order of the Postmaster-General awarding the contract to the Purcell

[6] "It makes no difference that the contract was not formally signed or the bond formally approved * * *. Their formal execution, as we have seen, was not essential to the consummation of the contract. That was accomplished, as was decided in the *Garfielde Case*, by the acceptance of the bid of the Envelope Company and the entry of the order awarding the contract to it." *Id.* at 319, 320.

Company was mailed to the company by the Third Assistant Postmaster-General prior to the attempt to revoke and cancel the contract (Transcript of Record, *United States* v. *Purcell Envelope Co.*, No. 168, Oct. Term, 1918, Finding V, R. 50, Exhibit D, R. 36). And in the *Garfielde* case, plaintiff was advised in writing by the Second Assistant Postmaster-General that his offer had been accepted. *Garfielde* v. *United States, supra* at 243. In the present action, on the other hand, there was no communication of the Commission's action dispatched to petitioner.

3. In the alternative, petitioner asserts that it obtained information of the acceptance from the Division of Large Vessel Sales, and that the contract was thereby executed because regulations of the Commission provide that inquiries concerning bids after their opening, and award of vessels should be addressed to the Chief, Bid Sales Section. 46 CFR, 1946 Supp., Sec. 200.23, *infra*, p. 21. Petitioner contends therefore, that the courts below erred in finding that only the Secretary or the Commission itself had authority to communicate notice of official commission action (Finding 12, R. 16, 81). However, concurrent findings of fact will not be re-examined by this Court (*Comstock* v. *Group of Institutional Investors*, 335 U. S. 211, 214, and cases there cited) and, in any case, these findings are amply supported in the record. The regulations of the Commission expressly provide that "The Office of

the Secretary * * * is responsible for appropriate notification of Commission actions." 46 CFR, 1946 Supp., Sec. 200.3, *infra*, p. 21. Section 95.5 of the Administrative Code of the Maritime Commission states that "If an award is made by the Commission, the Director of the Division of Vessel Disposal and Government Aids shall (a) *prepare for the Secretary's signature* a letter notifying the successful bidder of the award * * *." [Emphasis supplied.] *Infra*, pp. 22–23. The Secretary testified that it was his duty to notify both the staff of the Commission and successful or unsuccessful bidders (R. 32, 33). Properly construed, Sec. 200.23, on which petitioner relies, merely channels the incoming mail; reply is made over the signature of the Secretary.

Even assuming that information obtained from the Division of Large Vessel Sales would constitute proper notice of acceptance, such notice was not knowingly given petitioner. None of the employees of the Commission of whom Mr. Siegel, the agent of petitioner, inquired as to the awards knew that he was employed by petitioner (Finding 10, R. 16, 35, 38, 41, 46, 48). As already noted, *supra*, p. 10, notice to third parties is not notice to the offeror. Moreover, petitioner's reliance on 46 CFR, 1946 Supp., Sec. 200.23 (*infra*, p. 21) proves too much. That regulation provides that inquiries should be addressed to the Chief, Bid Sales Section, but Mr. Siegel directed his in-

quiries to Mr. Carter, Chief of the Contract Branch, and Mr. Taylor, his Administrative Assistant (R. 16). Thus, assuming that petitioner is correct in contending that the Secretary was not the only officer authorized to give notice, such information as it obtained did not come from an authorized officer and, therefore, could not constitute notice of acceptance. Cf. *Powell* v. *Lee*, 99 L. T. 284, 24 T. L. R. 606 (K. B.).

4. Even if the Commission, as agent for the United States, entered into a valid contract to sell petitioner the surplus L. S. T.'s in question (R. 65–69), petitioner cannot maintain this suit. Although the United States is not named as a party, the complaint on its face shows that, in all but the defendant's name[7] the suit is, in effect, one to compel specific performance by the United States, which has not consented to be sued.[8] In its prayer for relief, petitioner requests the Court to decree that the award made on January 22, 1948, is valid and still in effect, and that title be vested in petitioner (R. 6). The rule is firmly established that the federal courts have no juris-

[7] In determining whether the suit is against the sovereign, it is, of course, immaterial that the sovereign is not named as a party defendant. *Ex parte New York*, 256 U. S. 490, 500; *Worcester County Trust Co.* v. *Riley*, 302 U. S. 292, 296; *Mine Safety Appliances Co.* v. *Forrestal*, 326 U. S. 371; *Ford Motor Co.* v. *Department of Treasury*, 323 U. S. 459, 464.

[8] The Court of Appeals, in view of its holding that there was no contract, found it unnecessary to consider whether this is a suit against the United States (R. 81).

diction to entertain proceedings seeking specific performance of the sovereign's contracts. See Brief for the Petitioner, *Larson* v. *Domestic and Foreign Commerce Corp.*, No. 31, this Term, now pending decision.[9]

5. Even if the complaint should not be dismissed as initiating an unconsented suit against the United States, we believe that equity jurisprudence requires its dismissal on the ground that petitioner has an adequate remedy at law. Assuming that a contract to sell exists, the Invitation for Bids clearly provides that legal title shall be transferred with the delivery of the vessels (R. 57, 58); accordingly, petitioner acquired no title. For breach of the contract to sell, the United States would be liable in damages and could be sued in the Court of Claims. The vessels involved are not unique, having value solely as scrap (R. 53), and petitioner's only loss consists of resale profits (R. 5) which are calculable.

6. Finally, it is respectfully called to the Court's attention that, in the absence of an injunction pending appeal, the vessels here involved were sold and delivered to other parties, titles thereto transferred, and the ships may

[9] Should the *Larson* case be affirmed, we submit that the contractual terms set forth in the instant Invitation for Bids reveal clearly that title was not to pass until delivery of the vessels (R. 57, 58), *supra*, pp. 3–4, and that *Larson*, which involved a contract with different terms, could not, therefore, be controlling here.

already have been scrapped.[10] The present action, therefore, might very well be moot. If the action is not moot, it would seem that the purchasers are indispensable parties who have not been joined.

CONCLUSION

The decision below is clearly correct, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should, therefore, be denied.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
SAMUEL D. SLADE,
BENJAMIN FORMAN,
Attorneys.

APRIL 1949.

[10] See Appendix B, *infra*, pp. 24–25.

APPENDIX A

1. Section 3 of the Administrative Procedure Act, 60 Stat. 238, 5 U. S. C. 1002, provides in part as follows:

> SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—
>
> * * * * *
>
> (b) OPINIONS AND ORDERS.—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.
>
> (c) PUBLIC RECORDS.—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

2. Pertinent regulations of the United States Maritime Commission, 46 CFR, 1946 Supp., Part 200 *et seq.*, provide in part as follows:

> § 200.1 *Organization and functions of the United States Maritime Commission.*
>
> * * * * *
>
> (e) The Commission's complete organization, together with its procedures, both general and with relation to internal affairs

is set out in the Commission's "Administrative Code", which is available for examination at the office of the Secretary in Washington, to whom should be addressed inquiries as to the most expeditious method of handling specific matters with the Commission.

* * * * *

§ 200.3. *Secretary.*—The Office of the Secretary (through 9 sections) prepares the Commission's agenda and minutes of Commission's meetings, and is responsible for appropriate notification of Commissions actions; * * *

§ 200.23. *Division of Large Vessel Sales.*— * * * This division invites application for purchase of vessels covered by the Merchant Ship Sales Act of 1946, and bids for non-war built vessels sold for operation, scrap or purposes other than operation, including Navy L. S. T. vessels. Requests for inclusion on mailing lists may be made to the Executive Assistant, Division of Large Vessel Sales. Inquiries concerning bids after their opening, and award of vessels should be addressed to the Chief, Bid Sales Section. The sale of vessels under the Merchant Ship Sales Act of 1946 is publicly announced.

§ 204.1. *Opinions, orders, and public records available for inspection.*—(a) Pursuant to section 3 (a) and (c), respectively, of the Administrative Procedure Act (60 Stat. 237) there shall be available:

(1) For public inspection, all final opinions or orders in the adjudication of cases (except those held by the Commission for good cause to be confidential and not cited as precedents), and all rules;

(2) To persons properly and directly concerned therewith, matters of official

record, except as otherwise required by statute, and except information held confidential for good cause found.

(b) Application for inspection of materials covered by paragraph (a) of this section shall be made to the Secretary of the Commission, Washington, D. C., who shall have authority to decide all questions presented by the application (52 Stat. 964, sec. 12, 60 Stat. 244; 46 U. S. C. 1114, 5 U. S. C. Sup. 1011) [G. O. 63, Aug. 27, 1946, effective Sept. 11, 1946, 11 F. R. 177A–598].

3. Administrative Code for the Maritime Commission, adopted Mar. 29, 1946, effective April 24, 1946:

§ 63.7. *Records maintained by Minutes Section.*

(a) *Accessibility.*—Formal summaries of action taken by the Commission shall be prepared, and an index digest thereof maintained, by the Minutes Section, Office of the Secretary. Records maintained by the Minutes Section shall be accessible to officers and employees of the Commission on proper identification and for a justifiable reason, and shall not be accessible to persons outside the Commission without the prior approval of the Secretary.

(b) *Certified copies.*—Where certified copies of Commission actions or other documents are required for court or other purposes, application shall be made to the Office of the Secretary. Upon proper identification, and justification for the request, the Minutes Section shall cause a copy to be prepared in proper form.

§ 95.5 *Notification of Award.*—If an award is made by the Commission, the Di-

rector of the Division of Vessel Disposal and Government Aids shall (a) prepare for the Secretary's signature a letter notifying the successful bidder of the award, and calling attention to terms and conditions of the award; (b) notify the Division of Finance for Construction to return to the unsuccessful bidders their good-faith checks; and (c) notify the General Counsel of the award, requesting the General Counsel to prepare a bill of sale for the vessel, to be delivered to the successful bidder upon payment of the balance due and delivery of the vessel.

APPENDIX B

UNITED STATES MARITIME COMMISSION,
Washington 25, D. C., March 8, 1949.

The Honorable THE ATTORNEY GENERAL:

Re: *New Orleans Shipwrecking Corporation, Appellant* v. *William W. Smith, Grenville Mellon, Richard Parkhurst, Raymond McKeough, and Joseph K. Carson, Jr., Appellees*—United States Court of Appeals for the District of Columbia Circuit.

DEAR SIR: With regard to your inquiry as to the status of the vessels involved in the above action, please be advised that they have all been sold subsequent to February 13, 1948, pursuant to appropriate action of the United States Maritime Commission, and title to all these vessels has passed from the United States of America to the purchasers of the vessels. These vessels are described as follows:

LST–874	LST–968	LST–1053
LST–915	LST–984	LST–1139
LST–930	LST–989	LST–119
LST–942	LST–1019	LST–571
LST–949	LST–1023	LST–740

Except for a temporary restraining order forbidding the sale of the above vessels issued by the United States District Court for the District of Columbia on January 30, 1948, as continued by order issued by the same Court on February

6, 1948, which expired by its own terms on February 13, 1948, there has never been any order, injunction or other action taken by the United States District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia Circuit or by any other Court forbidding, restraining or in any other way interfering with the sale of these vessels by the United States Maritime Commission.

Very truly yours,

(S) PAUL D. PAGE, JR.,
Solicitor.

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